

CHAPTER Env-Wt 400 DELINEATION AND CLASSIFICATION OF JURISDICTIONAL AREAS;  
CLASSIFICATION OF PROJECTS

Env-Wt 401 - Env-Wt 404 Reserved

PART Env-Wt 405 PURPOSE AND APPLICABILITY

Env-Wt 405.01 Purpose. The purpose of this part is to establish:

- (a) The criteria for delineating and classifying jurisdictional areas; and
- (b) The criteria for classifying the various kinds of projects that impact jurisdictional areas.

Env-Wt 405.02 Applicability. This part shall apply to all dredging, filling, or construction activities, or any combination thereof, undertaken or proposed to be undertaken in any jurisdictional area.

PART Env-Wt 406 DELINEATION AND CLASSIFICATION OF JURISDICTIONAL AREAS

Env-Wt 406.01 Delineation of Wetlands Boundaries.

(a) For projects for which a wetlands delineation is required, wetlands boundaries shall be delineated by a certified wetlands scientist except in the circumstances listed in RSA 310-A:79, reprinted in Appendix C.

(b) Wetlands delineations shall remain valid for 5 years, unless:

- (1) There is a reasonable basis to believe the original delineation might be incorrect, such as because it was done while the ground was snow covered or during the dry season;
- (2) Adjacent property or other areas on the same property have been disturbed in such a way as to increase or decrease stormwater run-off or groundwater flow, or both, to any portion of the property for which the delineation was done;
- (3) The individual who did the delineation has submitted other delineations that have been shown to be incorrect; or
- (4) Any other information becomes available that warrants a review of the delineation.

(c) If a wetlands delineation is more than 5 years old or if any of the criteria listed in (b), above, are met, the delineation shall be:

- (1) Verified through field observations and documentation to be the same as the original delineation; or
- (2) Replaced with a new delineation, if the original delineation cannot be verified.

Env-Wt 406.02 References for Delineation of Wetlands Boundaries.

(a) Subject to (b) through (d), below, wetlands shall be delineated based on the presence of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers "Wetlands Delineation Manual", Technical Report Y-87-1, January 1987, and the "Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region", Version 2.0, U.S. Army Corps of Engineers, January 2012, both available as noted in Appendix B.

(b) The hydrophytic vegetation component of the delineation shall be done in accordance with the Northcentral and Northeast 2016 Regional Wetland Plant List, Version 3.3, 2016, published by the US Army Corps of Engineers and available as noted in Appendix B.

**NOTE:** All cross-references subject to verification/correction.

(c) The hydric soils component of delineations shall be determined in accordance with the New England Hydric Soils Technical Committee's "Field Indicators for Identifying Hydric Soils in New England", Version 4, 2017, published by the New England Interstate Water Pollution Control Commission and available as noted in Appendix B.

(d) Delineations of vernal pools shall be based on the characteristics listed in the definition of "vernal pool" in Env-Wt 102. To assist in the delineation, individuals may use either of the following references, available as noted in Appendix B:

- (1) "Identification and Documentation of Vernal Pools in New Hampshire", 3<sup>rd</sup> Ed., 2016, published by the New Hampshire fish and game department and available as noted in Appendix B; or
- (2) The U.S Army Corps of Engineers (USACE) "Vernal Pool Assessment" guidance and form dated 9-6-2016, Appendix L of the USACE New England District Compensatory Mitigation Guidance, available as noted in Appendix B.

Env-Wt 406.03 Wetlands Delineation Not Required for Certain Projects.

- (a) Delineation of wetlands, including vernal pools, shall not be required for the following projects:
  - (1) Any project that qualifies for a statutory permit by notification (SPN);
  - (2) Low impact exotic weed control projects;
  - (3) Agriculture projects impacting less than 3 acres of wet meadow, provided the application and plan are prepared by the NRCS or a certified wetland scientist;
  - (4) Access to a single-family dwelling under the exemption in RSA 310-A:79, V; and
  - (5) Low impact projects at the shoreline of open water, such as a seasonal dock or beach.
- (b) Delineation of wetlands, including vernal pools, shall not be required outside the limits of impact if:
  - (1) No work is done prior to a complete and accurate notification being submitted for the activity; and
  - (2) The activity covered by the notification is:
    - a. Timber harvesting undertaken in compliance with RSA 227-J where:
      1. No development or other change in land use will occur;
      2. The project qualifies as a low impact project under the criteria in Env-Wt 407 and Env-Wt 408; and
      3. The notification includes the location(s) and type(s) of wetlands crossed on a USGS map and an NRCS soils drainage map, and ensures that the wetland dimensions and project impacts meet the CAT1 thresholds;
    - b. Agriculture that falls outside of the parameters of (a)(3), above, only because:
      1. The area of impact exceeds 3 acres;
      2. Alteration will occur to other than wet meadows only; or
      3. A combination of a. and b.; or
    - c. A combination of timber harvesting and agriculture as described in a. and b., above.

**NOTE:** All cross-references subject to verification/correction.

Env-Wt 406.04 Delineation of Water Courses. Water courses having flows that are sufficient to develop a defined channel or bed shall be delineated by identifying the top of bank on each side of the defined channel or bed, where:

- (a) For other than braided streams, the defined channel or bed is bounded on the landward side by:
  - (1) Upland;
  - (2) The channel bank, including natural and man-made levees; or
  - (3) Wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens; and
- (b) If the water course is a braided stream, the system is bounded by banks forming the outer limits of the depression within which the braiding occurs.

Env-Wt 406.05 Identification of Other Jurisdictional Areas. Jurisdictional areas not subject to delineation as described in Env-Wt 406.01, Env-Wt 406.02, or Env-Wt 406.04 shall be identified as described below, as applicable:

- (a) Any features subject to Env-Wt 600 shall be delineated based on their definitions;
- (b) Surface water bodies such as lakes and ponds shall be delineated to the ordinary high water mark; and
- (c) For any project in a prime wetland or a duly-established 100-foot buffer for which a delineation has been submitted to the department pursuant to Env-Wt 703, the submitted delineation shall be used.

Env-Wt 406.06 Classification of Wetlands.

- (a) Each wetland shall be classified by the applicant in accordance with “Classification of Wetlands and Deepwater Habitats of the United States, Adapted from Cowardin, Carter, Golet and LaRoe (1979), Wetlands Subcommittee, Federal Geographic Data Committee and US Fish and Wildlife Service, Washington DC (August 2013), available as noted in Appendix B.
- (b) The wetland classification of each wetland shall be identified on plans submitted with an application for a standard permit.
- (c) Each water course shall be classified in accordance with Applied River Morphology, 2<sup>nd</sup> edition, 1996, available as noted in Appendix B.
- (d) Each natural community and natural community system shall be mapped and identified on plans submitted with an application for a standard permit in accordance with the following publications of the New Hampshire department of cultural and natural resources, natural heritage bureau, available as noted in Appendix B:

- (1) “Natural Communities of New Hampshire”, 2<sup>nd</sup> edition, 2012; and
- (2) “Natural Community Systems of New Hampshire”, 2<sup>nd</sup> edition, 2011.

PART Env-Wt 407 BASIS FOR CLASSIFICATION OF PROJECTS

Env-Wt 407.01 Basis for Impact Classification. Unless otherwise specified in this part or in Env-Wt 408, a project shall be classified as a CAT1, CAT2, or CAT3<sup>1</sup> project based on:

- (a) The type of jurisdictional area or special resource area proposed to be impacted by the project;
- (b) The size of the proposed impact on jurisdictional areas; or

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<sup>1</sup> CAT1 ≈ minimum/low impact; CAT2 ≈ minor impact; CAT3 ≈ major impact

- (c) A combination of (a) and (b), above.

Env-Wt 407.02 Resource Disqualifications (RDQs). A project that impacts one or more of the following resource types and that does not qualify for a project-type exception (PTE) under Env-Wt 407.04 shall be classified as a CAT3 project regardless of the size of the impact:

- (a) Exemplary natural community or S1 or S2 rare community systems as defined by DNCR-NHB, including but not limited to:
- (1) Bog or fen peat or calcareous systems; and
  - (2) Atlantic white cedar or Silver maple peat, calcareous systems;
- (b) Floodplain wetland systems;
- (c) Riverine wetlands;
- (d) Salt marsh, salt pond, tidal flat system, or tidal surface water;
- (e) Undisturbed tidal buffer zone or developed tidal buffer zone areas within 75 feet of a salt marsh;
- (f) Sand dunes;
- (g) Nontidal marsh of one acre or more in size or a very poorly drained scrub shrub wetland of any size;
- (h) Designated prime wetland or duly-established 100-foot buffer;
- (i) Designated river corridor, except if the project is routine roadway maintenance covered by an SPN or EXP;
- (j) Tier 3 stream, including any wetland that is hydrologically connected to a tier 3 stream;
- (k) Habitat for any:
- (1) Species of special concern;
  - (2) Threatened or endangered species; or
  - (3) Species of greatest conservation need (SGCN) as determined by the New Hampshire fish and game department;
- (l) Forested wetland of 10 acres or more in size where at least 50% of the wetland is very poorly drained soils;
- (m) Any wetland that provides at least one of the following functions:
- (1) Protection of life and property from flooding and flood flows, due to flood storage or flood abatement functions;
  - (2) Coastal storm surge protection;
  - (3) Protection in the form of a development-free groundwater recharge zone immediately adjacent to a private or public drinking water supply, wellhead protection area, or associated aquifer;
  - (4) Maintenance of water quality to protect fisheries, water supplies, or source water protection areas through retention of sediment or transformation or retention of pollutants, or both; or
  - (5) Protection of wildlife habitat and ecological diversity by providing diverse wetland types and structural vegetation diversity and size;

(n) Any project for which at least one of the wetlands proposed for impact achieves the highest score based on certified wetland scientist wetland assessment in accordance with Env-Wt 406 or Env-Wt 6??; and

(o) Any stream that has a riparian woody corridor, diversity of riffle and pool substrate and coarse woody material.

Env-Wt 407.03 Size Thresholds; Stream Length Measurements.

(a) Projects shall be classified based on size as shown in table 407-1, below, unless the project is subject to an RDQ pursuant to Env-Wt 407.02 or qualifies for a PTE pursuant to Env-Wt 407.04:

<b>Table 407-1: Classification Based on Size of Impact</b>			
<b>Type of Jurisdictional Area</b>	<b>CAT1</b>	<b>CAT2</b>	<b>CAT3</b>
Other than watercourse	< 3,000 square feet (SF)	≥ 3,000 SF to < 10,000 SF	≥ 10,000 SF
Watercourse	< 50 linear feet (LF)	≥ 50 LF to < 200 LF	≥ 200 LF

(b) Watercourse length measurements shall be made as follows:

(1) For intermittent watercourses, the distance shall be measured along the thread of the channel; and

(2) For perennial watercourses, the total distance shall be calculated by summing the lengths of the disturbance to the channel and the banks.

Env-Wt 407.04 Project Type Exceptions.

(a) Classification based on size as established in Env-Wt 407.03 shall not apply to any project that meets the requirements for an SPN under Env-Wt 308. Such projects remain subject to all applicable conditions in the statutory provision that created the SPN, Env-Wt 307, and Env-Wt 308.

(b) Classification based on resource type impacted shall not apply to a restoration project that:

(1) Receives financial support and direct supervision of a New Hampshire state agency, the US Environmental Protection Agency, the US Army Corps of Engineers, the US Natural Resources Conservation Service, or the US Fish and Wildlife Service; and

(2) Is not done to restore any area that is subject to a removal or restoration order.

(c) Classification based on resource type impacted shall not apply to:

(1) Maintenance, repair, and replacement in-kind of existing legal shoreline structures, whether tidal or non-tidal; and

(2) Repair, but not replacement or slip lining, of existing legal stream crossings.

PART Env-Wt 408 SPECIAL RESOURCE AREAS; FILL IN PUBLIC WATERS; AGGREGATION

Env-Wt 408.01 Projects In Special Resource Areas.

(a) A project shall be classified as CAT3 if any part of the project impacts a special resource area as defined in Env-Wt 100.

(b) Classification as a CAT3 project based on (a), above, shall:

(1) Take precedence over any lower classification; and

(2) Not be eligible for a waiver.

**NOTE:** All cross-references subject to verification/correction.



Env-Wt 408.02 Fill in Public Waters to Make Land.

- (a) A project shall be classified as CAT3 if, as any part of the project, fill will be placed in public waters for the purpose of making land.
- (b) Classification as a CAT3 project based on (a), above, shall:
  - (1) Take precedence over any lower classification; and
  - (2) Not be eligible for a waiver.

Env-Wt 408.03 Aggregation of Projects: Consistent Scheme of Development.

- (a) As authorized by RSA 482-A:11, V, a series of CAT2 projects undertaken by a single developer or several developers over a period of 5 years shall constitute a CAT3 project if the projects, when taken in the aggregate, meet any of the criteria for a CAT3 project as identified in Env-Wt 407.02 or Env-Wt 407.03, and:
  - (1) The subject properties are abutting;
  - (2) The projects are a part of an overall scheme of development; or
  - (3) The projects are otherwise consistent parts of an eventual whole.
- (b) A series of CAT2 or CAT1 projects, or any combination thereof, undertaken by a single developer or several developers over a period of 5 years shall constitute a CAT3 project if the projects, when taken in the aggregate, meet any of the criteria for a CAT3 project as identified in Env-Wt 407.02 or Env-Wt 407.03, and:
  - (1) The subject properties are abutting;
  - (2) The projects are a part of an overall scheme of development; or
  - (3) The projects are otherwise consistent parts of an eventual whole.
- (c) Classification as a CAT3 project based on (a) or (b), above, shall:
  - (1) Take precedence over any lower classification; and
  - (2) Not be eligible for a waiver.

Env-Wt 408.04 Aggregation of Projects: Same Property.

- (a) A project shall be classified as CAT3 if the totality of all impacts of all projects on the subject property within the last 5 years meets any of the criteria for a CAT3 project listed in Env-Wt 407.02 or Env-Wt 407.03.
- (b) For purposes of (a), above, the following shall apply:
  - (1) The subject property shall include any lots that have been subdivided from the property if the lots were part of the same property when one or more of the prior projects occurred; and
  - (2) Previous work on the subject property shall include all dredging, filling, and construction activities on the property, regardless of whether the work was done pursuant to an exemption or any form of approval from the department, or was done illegally.
- (c) Classification as a CAT3 project based on (a) or (b), above, shall:
  - (1) Take precedence over any lower classification; and
  - (2) Not be eligible for a waiver.

Env-Wt 408.05 Aggregation of Projects: Same Wetlands Complex.

(a) A project shall be classified as CAT3 if the totality of the proposed impacts, the impacts of all projects on the same wetlands area or wetlands complex within the last 10 years, and all impacts to the same wetlands complex proposed in other pending applications meets any of the criteria for a CAT3 project listed in Env-Wt 407.02 or Env-Wt 407.03.

(b) Classification as a CAT3 project based on (a), above, shall:

- (1) Take precedence over any lower classification; and
- (2) Not be eligible for a waiver.

**APPENDIX A: STATE STATUTES, FEDERAL STATUTES & REGULATIONS IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>
Env-Wt 405	RSA 482-A:1 and 3
Env-Wt 406	RSA 482-A:1 and 3
Env-Wt 407	RSA 482-A:1 and 3
Env-Wt 408	RSA 482-A:1 and 3

**APPENDIX B: INCORPORATED REFERENCES**

<b>Rule (Env-Wt)</b>	<b>Title (Date)</b>	<b>Obtain from:</b>
406.02(a)	Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (January 1987)	U.S. Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742-2751 978-318-8338  Available to download at no cost from: <a href="https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/16/nrcs143_020653.pdf">https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/16/nrcs143_020653.pdf</a>
406.02(b)	Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region, Version 2.0 (January 2012)  Northcentral and Northeast 2016 Regional Wetland Plant List, Version 3.3 (2016)	Available to download at no cost from: <a href="http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/NCNE_supp2.pdf">http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/NCNE_supp2.pdf</a>  Available to download at no cost from: <a href="http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/news/FS_NWP_PlantList_Apr2016_v2.pdf">http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/news/FS_NWP_PlantList_Apr2016_v2.pdf</a>

**NOTE:** All cross-references subject to verification/correction.

Rule (Env-Wt)	Title (Date)	Obtain from:
406.02(c)	Field Indicators for Identifying Hydric Soils in New England, Version 4 (2017)	New England Interstate Water Pollution Control Commission Wannalancit Mills 650 Suffolk Street, Suite 410 Lowell, MA 01854 Phone: (978) 323-7929 Fax: (978) 323-7919 General Email: <a href="mailto:mail@neiwpcc.org">mail@neiwpcc.org</a>  Available to download at no cost from: <a href="http://www.neiwpcc.org/hydricsoils.asp">http://www.neiwpcc.org/hydricsoils.asp</a>
406.02(d)(1)	Identification and Documentation of Vernal Pools in New Hampshire, 3rd Ed. (2016)	N.H. Fish and Game Department  Available to download at no cost from: <a href="http://www.wildlife.state.nh.us/nongame/documents/vernal-pool-manual.pdf">http://www.wildlife.state.nh.us/nongame/documents/vernal-pool-manual.pdf</a>
406.02(d)(2)	“Vernal Pool Assessment” guidance and form dated 9-6-2016, Appendix L of the USACE New England District Compensatory Mitigation Guidance	U.S Army Corps of Engineers <a href="http://www.nae.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016_New_England_Compensatory_Mitigation_Guidance.pdf">http://www.nae.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016_New_England_Compensatory_Mitigation_Guidance.pdf</a>
406.06(a)	Classification of Wetlands and Deepwater Habitats of the United States (2013)	US Fish and Wildlife Service  Available to download at no cost from: <a href="https://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States-2013.pdf">https://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States-2013.pdf</a>
406.06(c)	Applied River Morphology, 2nd edition (1996)	Wildland Hydrology Pagosa Springs, CO  Available on-line; prices range from ~\$63 (used) to ~\$155 (new)
406.06(d)(1)	Natural Communities of New Hampshire, 2nd edition (2012)	NH Department of Cultural and Natural Resources, Natural Heritage Bureau  Available to download at no cost from: <a href="https://www.nhdf1.org/library/pdf/Natural%20Heritage/WebVersion_Tech%20Manual.pdf">https://www.nhdf1.org/library/pdf/Natural%20Heritage/WebVersion_Tech%20Manual.pdf</a>
406.06(d)(2)	Natural Community Systems of New Hampshire, 2nd edition (2011)	  Available to download at no cost from: <a href="https://www.nhdf1.org/library/pdf/Natural%20Heritage/Web%20Version%20-%20Systems%20Report.pdf">https://www.nhdf1.org/library/pdf/Natural%20Heritage/Web%20Version%20-%20Systems%20Report.pdf</a>

#### APPENDIX C: EXEMPTIONS FROM REQUIREMENT FOR CERTIFIED WETLANDS SCIENTIST

**RSA 310-A:79 Exemption.** – This subdivision shall not be construed to prevent or to affect:

I. The practice of soil science by a nonresident having no established place of business in this state when such practice does not exceed, in the aggregate, more than 30 working days in any calendar year, provided such person is legally qualified to practice in a state or country in which the requirements and qualifications for obtaining a certificate are not lower than those specified in this subdivision. Practice for any portion of a day shall be deemed to constitute practice for an entire day.

**NOTE:** All cross-references subject to verification/correction.



II. The work of an employee or a subordinate of a person holding a certificate under this subdivision, or any employee of a person practicing lawfully under paragraph I, done under the direct supervision of a person holding a certificate under this subdivision or a person practicing lawfully under paragraph I.

III. The practice of officers and employees of the government of the United States or of the state of New Hampshire while engaged within this state in the practice of the profession of soil science or wetland science for the government.

IV. The determination of a hydric soil boundary or test pit evaluation to the extent permitted pursuant to RSA 485-A:35 for the purposes of septic system design or subdivision application pursuant to RSA 485-A or rules adopted under RSA 485-A. For this work, a municipality shall not require qualifications different from those established pursuant to RSA 485-A:35.

V. A homeowner from preparing a plan to provide vehicular and utility access to the homeowner's primary residence within 50 feet from the edge of a traveled way; provided, that he or she complies with rules adopted by the department of environmental services and standards adopted by the board.